

**EXECUTIVE SUMMARY - ENFORCEMENT MATTER** Page 1 of 3  
**DOCKET NO.: 2004-2082-MLM-E TCEQ ID: RN100756097 CASE NO.: 22886**  
**RESPONDENT NAME: PAT, INC. DBA ACTION EXCAVATING**

<b>ORDER TYPE:</b>		
<input checked="" type="checkbox"/> 1660 AGREED ORDER	<input type="checkbox"/> FINDINGS AGREED ORDER	<input type="checkbox"/> FINDINGS ORDER FOLLOWING SOAH HEARING
<input type="checkbox"/> FINDINGS DEFAULT ORDER	<input type="checkbox"/> SHUTDOWN ORDER	<input type="checkbox"/> IMMINENT AND SUBSTANTIAL ENDANGERMENT ORDER
<input type="checkbox"/> AMENDED ORDER	<input type="checkbox"/> EMERGENCY ORDER	
<b>CASE TYPE:</b>		
<input type="checkbox"/> AIR	<input checked="" type="checkbox"/> MULTI-MEDIA (check all that apply)	<input checked="" type="checkbox"/> INDUSTRIAL AND HAZARDOUS WASTE
<input type="checkbox"/> PUBLIC WATER SUPPLY	<input checked="" type="checkbox"/> PETROLEUM STORAGE TANKS	<input type="checkbox"/> OCCUPATIONAL CERTIFICATION
<input type="checkbox"/> WATER QUALITY	<input type="checkbox"/> SEWAGE SLUDGE	<input type="checkbox"/> UNDERGROUND INJECTION CONTROL
<input type="checkbox"/> MUNICIPAL SOLID WASTE	<input type="checkbox"/> RADIOACTIVE WASTE	<input type="checkbox"/> DRY CLEANER REGISTRATION

**SITE WHERE VIOLATION(S) OCCURRED:** 6824 Oak Crest Drive West, Fort Worth, Tarrant County

**TYPE OF OPERATION:** Excavating and heavy equipment service facility

**SMALL BUSINESS:** ☒ Yes ☐ No

**OTHER SIGNIFICANT MATTERS:** There are no complaints. There is no record of additional pending enforcement actions regarding this facility location.

**INTERESTED PARTIES:** No one other than the ED and the Respondent has expressed an interest in this matter.

**COMMENTS RECEIVED:** The *Texas Register* comment period expired on October 9, 2007. No comments were received.

**CONTACTS AND MAILING LIST:**

**TCEQ Attorney:** Mr. Xavier Guerra, Litigation Division, MC 175, (210) 403-4016  
Ms. Jennifer Cook, Litigation Division, MC 175, (512) 239-1873

**TCEQ Enforcement Coordinator:** Mr. Sandy VanCleave, Enforcement Division, MC 219, (512) 239- 2670

**TCEQ Regional Contact:** Ms. Julianne King, DFW Regional Office, MC R-4, (817) 588-5800

**Respondent:** Mr. Royce D. Leatherman, Director, Pat, Inc. dba Action Excavating, 6824 Oak Crest Drive West, Fort Worth, Texas 76140

**Respondent's Attorney:** Mr. Marshall J. Day, Day & Day, P.C., P. O. Box 470765, Fort Worth, Texas 76147

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p><b>Type of Investigation:</b></p> <p><input type="checkbox"/> Complaint <input checked="" type="checkbox"/> Routine <input type="checkbox"/> Enforcement Follow-up <input type="checkbox"/> Records Review</p> <p><b>Date of Complaints Relating to this Case:</b> None</p> <p><b>Dates of Investigation Relating to this Case:</b> November 10, 2004</p> <p><b>Date of NOE Relating to this Case:</b> November 10, 2004</p> <p><b>Background Facts:</b> The EDPRP was filed on March 22, 2005. The Respondent filed an answer to the EDPRP on April 8, 2005. The Respondent signed an Agreed Order on August 1, 2006.</p> <p><b>PST/IHW</b></p> <p>1. Failed to provide corrosion protection to the underground storage tank [30 TEX. ADMIN. CODE § 334.49(a)(4) and Tex. WATER CODE § 26.3475(d)].</p> <p>2. Failed to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks [30 TEX. ADMIN. CODE § 37.815(a) and (b)].</p> <p>3. Failed to provide a method of release detection which is capable of detecting a release from any portion of the UST system which contains regulated substances including the tanks, piping and other underground ancillary equipment [30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1)].</p>	<p><b>Total Assessed:</b> \$9,660</p> <p><b>Total Deferred:</b> \$0</p> <p><b>SEP Conditional Offset:</b> \$0</p> <p><input type="checkbox"/> Expedited Settlement <input type="checkbox"/> Financial Inability to Pay</p> <p><b>Total Paid/Due to General Revenue:</b> \$280/9,380</p> <p>The Respondent has paid \$280 of the administrative penalty. The remaining amount of \$9,380 of the administrative penalty shall be payable in 35 monthly payments of \$268 each.</p> <p><b>Site Compliance History Classification</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Person Compliance History Classification</b> <input type="checkbox"/> High <input checked="" type="checkbox"/> Average <input type="checkbox"/> Poor</p> <p><b>Major Source:</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><b>Applicable Penalty Policy:</b> September 2002</p>	<p><b>Corrective Actions Taken</b></p> <p>The Respondent has implemented the following corrective measures:</p> <p>1) Beginning on December 28, 2004, a third-party contractor hired by Respondent began operations which resulted in waste oil being removed from the underground storage tank (UST), the UST being removed from the ground, soil samples being taken, all required reports being compiled, and contaminated soil being properly disposed of.</p> <p>2) On March 15, 2005, a third-party contractor hired by Respondent removed two 55-gallon drums from the site.</p>

**VIOLATION SUMMARY CHART:**

VIOLATION INFORMATION	PENALTY CONSIDERATIONS	CORRECTIVE ACTIONS TAKEN/REQUIRED
<p>4. Failed to register with the Commission, on authorized Commission forms, a UST in existence on or after September 1, 1987 [30 TEX. ADMIN. CODE § 334.7(a)(1) and TEX. WATER CODE § 26.346(a)].</p> <p>5. Failed to prevent an unauthorized discharge of used oil and other wastes to surface soils and storm water drainage at the Facility [30 TEX. ADMIN. CODE § 335.4 and TEX. WATER CODE § 26.121(a)(2)].</p> <p>6. Failed to conduct a hazardous waste determination on the contents of an unlabeled 55-gallon drum that was observed on the west side of the Facility [30 TEX. ADMIN. CODE § 335.62 and CFR § 262.11].</p>		



Policy Revision 2 (September 2002)

## Penalty Calculation Worksheet (PCW)

PCW Revision December 10, 2004

DATES	Assigned	06-Dec-2004	Screening	16-Dec-2004	Priority Due	04-Feb-2005	EPA Due
	PCW	18-May-2006					

<b>RESPONDENT/FACILITY INFORMATION</b>	
Respondent	Pat, Inc. dba Action Excavating
Reg. Ent. Ref. No.	RN100756097
Additional ID No(s)	N/A
Facility/Site Region	4-Dallas/Fort Worth
Major/Minor Source	Minor Source

<b>CASE INFORMATION</b>			
Enf./Case ID No.	22886	No. of Violations	6
Docket No.	2004-2082-MLM-E	Order Type	1660 without deferral
Case Priority	3	Enf. Coordinator	Sandy VanCleave
Media Program(s)	Petroleum Storage Tank	EC's Team	Enforcement Team 5
Multi-Media	Industrial Hazardous Waste		
Admin. Penalty \$ Limit Minimum	\$0	Maximum	\$10,000

## Penalty Calculation Section

**TOTAL BASE PENALTY (Sum of violation base penalties)** Subtotal 1 **\$10,500**

**ADJUSTMENTS (+/-) TO SUBTOTAL 1**

Subtotals 2-7 are obtained by multiplying the Total Base Penalty (Subtotal 1) by the indicated percentage.

Compliance History 2% Enhancement Subtotals 2, 3, & 7 **\$210**

Notes The Respondent received one NOV for violation that is not related to violations covered in this enforcement action.

Culpability No 0% Enhancement Subtotal 4 **\$0**

Notes The Respondent does not meet the culpability criteria.

Good Faith Effort to Comply 10% Reduction Subtotal 5 **-\$1,050**

	Before NOV	NOV to EDRP/Settlement Offer
Extraordinary		
Ordinary		X
N/A		(mark with a small x)

Notes The Respondent submitted documentation on April 4, 2005, showing all violations were corrected prior to the mailout of the EDRP.

Economic Benefit 0% Enhancement\* Subtotal 6 **\$0**

Total EB Amounts	\$1,038
Approx. Cost of Compliance	\$22,000

\*Capped at the Total EB \$ Amount

**SUM OF SUBTOTALS 1-7** Final Subtotal **\$9,660**

**OTHER FACTORS AS JUSTICE MAY REQUIRE** Adjustment **\$0**

Reduces or enhances the Final Subtotal by the indicated percentage. (Enter number only; e.g. -30 for -30%.)

Notes

Final Penalty Amount **\$9,660**

**STATUTORY LIMIT ADJUSTMENT** Final Assessed Penalty **\$9,660**

**DEFERRAL** Reduction Adjustment **\$0**

Reduces the Final Assessed Penalty by the indicated percentage. (Enter number only; e.g. 20 for 20% reduction.)

Notes There is no deferral because this is not an expedited case.

**PAYABLE PENALTY** **\$9,660**

Screening Date 16-Dec-2004

Docket No. 2004-2082-MLM-E

PCW

Respondent Pat, Inc. dba Action Excavating

Policy Revision 2 (September 2002)

Case ID No. 22886

PCW Revision December 10, 2004

Reg. Ent. Reference No. RN100756097

Additional ID No(s). N/A

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Sandy VanCleave

Site Address 6824 Oak Crest Drive West, Fort Worth, Tarrant County

## Compliance History Worksheet

## &gt;&gt; Compliance History Site Enhancement (Subtotal 2)

Component	Number of...	Enter Number Here	Adjust.
NOVs	Written NOVs with same or similar violations as those in the current enforcement action ( <i>number of NOVs meeting criteria</i> )	0	0%
	Other written NOVs	1	2%
Orders	Any agreed final enforcement orders containing a denial of liability ( <i>number of orders meeting criteria</i> )	0	0%
	Any adjudicated final enforcement orders, agreed final enforcement orders without a denial of liability, or default orders of this state or the federal government, or any final prohibitory emergency orders issued by the commission	0	0%
Judgments and Consent Decrees	Any non-adjudicated final court judgments or consent decrees containing a denial of liability of this state or the federal government ( <i>number of judgments or consent decrees meeting criteria</i> )	0	0%
	Any adjudicated final court judgments and default judgments, or non-adjudicated final court judgments or consent decrees without a denial of liability, of this state or the federal government	0	0%
Convictions	Any criminal convictions of this state or the federal government ( <i>number of counts</i> )	0	0%
Emissions	Chronic excessive emissions events (number of events)	0	0%
Audits	Letters notifying the executive director of an intended audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which notices were</i>	0	0%
	Disclosures of violations under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 ( <i>number of audits for which violations were disclosed</i> )	0	0%
Please Enter Yes or No			
Other	Environmental management systems in place for one year or more	No	0%
	Voluntary on-site compliance assessments conducted by the executive director under a special assistance program	No	0%
	Participation in a voluntary pollution reduction program	No	0%
	Early compliance with, or offer of a product that meets future state or federal government environmental requirements	No	0%

Adjustment Percentage (Subtotal 2) 2%

## &gt;&gt; Repeat Violator (Subtotal 3)

No

Adjustment Percentage (Subtotal 3) 0%

## &gt;&gt; Compliance History Person Classification (Subtotal 7)

Average Performer

Adjustment Percentage (Subtotal 7) 0%

## &gt;&gt; Compliance History Summary

Compliance History Notes

The Respondent received one NOV for violation that is not related to violations covered in this enforcement action.

Total Adjustment Percentage (Subtotals 2, 3, &amp; 7) 2%

<b>Screening Date</b> 16-Dec-2004	<b>Docket No.</b> 2004-2082-MLM-E	<b>PCW</b>
<b>Respondent</b> Pat, Inc. dba Action Excavating	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 22886	<i>PCW Revision December 10, 2004</i>	
<b>Reg. Ent. Reference No.</b> RN100756097		
<b>Additional ID No(s).</b> N/A		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Sandy VanCleave		
<b>Violation Number</b>	<div style="border: 1px solid black; text-align: center;">1</div>	
<b>Primary Rule Cite(s)</b>	<div style="border: 1px solid black; text-align: center;">30 Tex. Admin. Code § 334.49(a)(4)</div>	
<b>Secondary Rule Cite(s)</b>	<div style="border: 1px solid black; text-align: center;">Tex. Water Code § 26.3475(d)</div>	
<b>Violation Description</b>	<div style="border: 1px solid black; text-align: center;">Failed to provide corrosion protection to the underground storage tank (UST).</div>	
<b>Base Penalty</b>		<div style="border: 1px solid black; text-align: right;">\$10,000</div>

**>> Environmental, Property and Human Health Matrix**

	<b>Harm</b>			
	Major	Moderate	Minor	
<b>Release</b>				
Actual	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<b>Percent</b> <div style="border: 1px solid black; text-align: right;">25%</div>
Potential	<div style="border: 1px solid black; text-align: center;">X</div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<b>Percent</b> <div style="border: 1px solid black; width: 40px; height: 15px;"></div>

**Matrix Notes**

Human health or the environment could be exposed to a significant amount of pollutants which would exceed levels that are protective of human health or environmental receptors.

**Adjustment**

-\$7,500

**Base Penalty Subtotal**

\$2,500

**Violation Events**

**Number of Violation Events**

1

	daily	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	<b>Violation Base Penalty</b> <div style="border: 1px solid black; text-align: right;">\$2,500</div>
	monthly	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	
<i>mark only one</i>	quarterly	<div style="border: 1px solid black; text-align: center;">X</div>	
<i>use a small x</i>	semiannual	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	
	annual	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	
	single event	<div style="border: 1px solid black; width: 40px; height: 15px;"></div>	

One quarterly event is recommended for the time frame from the date of the investigation, November 10, 2004, to the screening date, December 16, 2004 to make the penalty commensurate with the situation.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <div style="border: 1px solid black; text-align: right;">\$33</div>	<b>Violation Final Penalty Total</b> <div style="border: 1px solid black; text-align: right;">\$2,300</div>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <div style="border: 1px solid black; text-align: right;">\$2,300</div>	

**Economic Benefit Worksheet**

Respondent Pat, Inc. dba Action Excavating  
 Case ID No. 22886  
 Reg. Ent. Reference No. RN100756097  
 Additional ID No(s) N/A  
 Media [Statute] Petroleum Storage Tank  
 Violation No. 1

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
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No commas or \$

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$5,000	10-Nov-2004	28-Dec-2004	0.1	\$33	n/a	\$33
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to provide corrosion protection for the UST or remove the tank from the ground. Date required is the investigation date and the final date is the date the tank was removed from the ground.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$5,000

TOTAL \$33

<b>Screening Date</b> 16-Dec-2004	<b>Docket No.</b> 2004-2082-MLM-E	<b>PCW</b>
<b>Respondent</b> Pat, Inc. dba Action Excavating	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 22886	<i>PCW Revision December 10, 2004</i>	
<b>Reg. Ent. Reference No.</b> RN100756097		
<b>Additional ID No(s).</b> N/A		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Sandy VanCleave		
<b>Violation Number</b> <input type="text" value="2"/>		
<b>Primary Rule Cite(s)</b>	<input type="text" value="30 Tex. Admin. Code § 37.815(a) and (b)"/>	
<b>Secondary Rule Cite(s)</b>	<input type="text"/>	
<b>Violation Description</b>	<input type="text" value="Failure to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum underground storage tank (UST)."/>	
<b>Base Penalty</b>		<input type="text" value="\$10,000"/>

**>> Environmental, Property and Human Health Matrix**

	<b>Harm</b>				
	Release	Major	Moderate	Minor	
OR	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	Percent <input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	
					Percent <input type="text" value="10%"/>

**Matrix Notes**

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

Number of Violation Events

	daily				
mark only one use a small x	monthly	<input type="text"/>	<input type="text"/>	<input type="text"/>	Violation Base Penalty <input type="text" value="\$1,000"/>
	quarterly	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	semiannual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	annual	<input type="text"/>	<input type="text"/>	<input type="text"/>	
	single event	<input checked="" type="checkbox"/>	<input type="text"/>	<input type="text"/>	

One single event is recommended based upon the investigation conducted on November 10, 2004.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
Estimated EB Amount <input type="text" value="\$683"/>	Violation Final Penalty Total <input type="text" value="\$920"/>
This violation Final Assessed Penalty (adjusted for limits) <input type="text" value="\$920"/>	



**Economic Benefit Worksheet**

Respondent Pat, Inc. dba Action Excavating  
 Case ID No. 22886  
 Reg. Ent. Reference No. RN100756097  
 Additional ID No(s) N/A  
 Media [Statute] Petroleum Storage Tank  
 Violation No. 2

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost No commas or \$	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
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**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]	\$650	10-Nov-2003	10-Nov-2004	1.0	\$33	\$650	\$683
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Estimated cost to provide financial assurance for one used oil UST for the 12 months preceding the investigation date.

Approx. Cost of Compliance \$650

TOTAL \$683

Screening Date 16-Dec-2004

Docket No. 2004-2082-MLM-E

PCW

Respondent Pat, Inc. dba Action Excavating

Policy Revision 2 (September 2002)

Case ID No. 22886

PCW Revision December 10, 2004

Reg. Ent. Reference No. RN100756097

Additional ID No(s) N/A

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Sandy VanCleave

Violation Number 3

Primary Rule Cite(s) 30 Tex. Admin. Code § 334.50(a)(1)(A)

Secondary Rule Cite(s) Tex. Water Code § 26.3475(c)(1)

Violation Description

Failed to provide a method of release detection which is capable of detecting a release from any portion of the UST system which contains regulated substances including the tanks, piping and other underground ancillary equipment.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

OR

Release	Harm		
	Major	Moderate	Minor
Actual			
Potential	X		

Percent 25%

## &gt;&gt; Programmatic Matrix

Falsification	Major	Moderate	Minor

Percent

Matrix Notes

Human health or the environment could be exposed to a significant amount of pollutants which would exceed levels that are protective of human health or environmental receptors.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

## Violation Events

Number of Violation Events 1

mark only one use a small x	daily	
	monthly	
	quarterly	X
	semiannual	
	annual	
	single event	

Violation Base Penalty \$2,500

One quarterly event is recommended for the time frame from the date of the investigation, November 10, 2004, to the screening date, December 16, 2004 to make the penalty commensurate with the situation.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$2

Violation Final Penalty Total \$2,300

This violation Final Assessed Penalty (adjusted for limits) \$2,300

**Economic Benefit Worksheet**

Respondent Pat, Inc. dba Action Excavating  
 Case ID No. 22886  
 Reg. Ent. Reference No. RN100756097  
 Additional ID No(s): N/A  
 Media [Statute] Petroleum Storage Tank  
 Violation No. 3

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Overtime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$250	10-Nov-2004	28-Dec-2004	0.1	\$2	n/a	\$2

Notes for DELAYED costs Estimated cost to provide a method of release detection for the UST. Date required is the investigation date and the final date the tank was removed from the ground.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance \$250

TOTAL \$2

<b>Screening Date</b> 16-Dec-2004	<b>Docket No.</b> 2004-2082-MLM-E	<b>PCW</b>
<b>Respondent</b> Pat, Inc. dba Action Excavating	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 22886	<i>PCW Revision December 10, 2004</i>	
<b>Reg. Ent. Reference No.</b> RN100756097		
<b>Additional ID No(s)</b> N/A		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Sandy VanCleave		
<b>Violation Number</b> 4		
<b>Primary Rule Cite(s)</b>	30 Tex. Admin. Code § 334.7(a)(1)	
<b>Secondary Rule Cite(s)</b>	Tex. Water Code § 26.346(a)	
<b>Violation Description</b>	Failed to register with the Commission, on authorized Commission forms, a UST in existence on or after September 1, 1987.	
<b>Base Penalty</b>		\$10,000

**>> Environmental, Property and Human Health Matrix**

		<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor	
<b>OR</b>	Actual	<input type="text"/>	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text"/>
	Potential	<input type="text"/>	<input type="text"/>	<input type="text"/>	

**>> Programmatic Matrix**

	Falsification	Major	Moderate	Minor	
	<input type="text"/>	X	<input type="text"/>	<input type="text"/>	<b>Percent</b> <input type="text" value="10%"/>

**Matrix Notes**

**Adjustment**

**Base Penalty Subtotal**

**Violation Events**

**Number of Violation Events**

<i>mark only one use a small x</i>	daily	<input type="text"/>	<b>Violation Base Penalty</b> <input type="text" value="\$1,000"/>
	monthly	<input type="text"/>	
	quarterly	<input type="text"/>	
	semiannual	<input type="text"/>	
	annual	<input type="text"/>	
	single event	X	

One single event is recommended based upon the investigation conducted on November 10, 2004.

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> <input type="text" value="\$1"/>	<b>Violation Final Penalty Total</b> <input type="text" value="\$920"/>
<b>This violation Final Assessed Penalty (adjusted for limits)</b> <input type="text" value="\$920"/>	

**Economic Benefit Worksheet**

Respondent Pat, Inc. dba Action Excavating  
 Case ID No. 22886  
 Reg. Ent. Reference No. RN100756097  
 Additional ID No(s) N/A  
 Media [Statute] Petroleum Storage Tank  
 Violation No. 4

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal				0.0	\$0	n/a	\$0
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)	\$100	10-Nov-2004	21-Dec-2004	0.1	\$1	n/a	\$1

Notes for DELAYED costs

Estimated cost to complete and submit the UST registration and self-certification form. Date required is the investigation date and the final date is the date that a notice was received that the UST was scheduled for removal.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$100****TOTAL** **\$1**

<b>Screening Date</b> 16-Dec-2004	<b>Docket No.</b> 2004-2082-MLM-E	<b>PCW</b>
<b>Respondent</b> Pat, Inc. dba Action Excavating	<i>Policy Revision 2 (September 2002)</i>	
<b>Case ID No.</b> 22886	<i>PCW Revision December 10, 2004</i>	
<b>Reg. Ent. Reference No.</b> RN100756097		
<b>Additional ID No(s).</b> N/A		
<b>Media [Statute]</b> Petroleum Storage Tank		
<b>Enf. Coordinator</b> Sandy VanCleave		
<b>Violation Number</b> 5		
<b>Primary Rule Cite(s)</b>	30 Tex. Admin. Code § 335.4	
<b>Secondary Rule Cite(s)</b>		
<b>Violation Description</b>	<p>Failed to prevent an unauthorized discharge of used oil and other wastes to surface soils and storm water drainage at the site. Specifically, during the November 10, 2004 investigation, it was documented that there was surface soil staining around two pipes in the embankment on the west side of the Facility and in the storm water drainage area. Additionally, during a follow-up investigation conducted on November 17, 2004, the investigator observed an unauthorized discharge from the Facility's oil/water separator discharge pipe discharging into the storm water drainage.</p>	
<b>Base Penalty</b>		\$10,000

<b>&gt;&gt; Environmental, Property and Human Health Matrix</b>				
OR	<b>Harm</b>			
	<b>Release</b>	Major	Moderate	Minor
	Actual	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
	Potential	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				<b>Percent</b> 10%
<b>&gt;&gt; Programmatic Matrix</b>				
	Falsification	Major	Moderate	Minor
	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
				<b>Percent</b> <input type="text"/>
<b>Matrix Notes</b>	<p>The discharge may result in the exposure of an insignificant amount of contaminants which will not exceed levels that are protective of human health and the environment.</p>			
<b>Adjustment</b>				-\$9,000
<b>Base Penalty Subtotal</b>				\$1,000

<b>Violation Events</b>		
<b>Number of Violation Events</b>	1	
mark only one use a small x	daily	<input type="checkbox"/>
	monthly	<input type="checkbox"/>
	quarterly	<input checked="" type="checkbox"/>
	semiannual	<input type="checkbox"/>
	annual	<input type="checkbox"/>
	single event	<input type="checkbox"/>
		<b>Violation Base Penalty</b> \$1,000
<p>One quarterly event is recommended for the time frame from the date of the investigation, November 10, 2004, to the screening date, December 16, 2004.</p>		

<b>Economic Benefit (EB) for this violation</b>	<b>Statutory Limit Test</b>
<b>Estimated EB Amount</b> \$300	<b>Violation Final Penalty Total</b> \$920
<b>This violation Final Assessed Penalty (adjusted for limits)</b> \$920	

**Economic Benefit Worksheet**

Respondent Pat, Inc. dba Action Excavating  
 Case ID No. 22886  
 Reg. Ent. Reference No. RN100756097  
 Additional ID No(s): N/A  
 Media [Statute] Petroleum Storage Tank  
 Violation No. 5

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$15,000	10-Nov-2004	05-Apr-2005	0.4	\$300	n/a	\$300
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to submit an affected property assessment report and if necessary to sample, remediate, and properly dispose of contaminated soil. Date required is the initial investigation date and the final date is the date a release determination report was submitted.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$15,000****TOTAL** **\$300**

Screening Date 16-Dec-2004

Docket No. 2004-2082-MLM-E

PCW

Respondent Pat, Inc. dba Action Excavating

Policy Revision 2 (September 2002)

Case ID No. 22886

PCW Revision December 10, 2004

Reg. Ent. Reference No. RN100756097

Additional ID No(s) N/A

Media [Statute] Petroleum Storage Tank

Enf. Coordinator Sandy VanCleave

Violation Number 6

Primary Rule Cite(s) 30 Tex. Admin. Code § 335.62

Secondary Rule Cite(s) 40 Code of Federal Regulations § 262.11

Violation Description Failed to conduct a hazardous waste determination on the contents of an unlabeled 55 gallon drum that was observed on the west side of the Facility.

Base Penalty \$10,000

## &gt;&gt; Environmental, Property and Human Health Matrix

Release	Harm			Percent
	Major	Moderate	Minor	
Actual				25%
Potential	X			

## &gt;&gt; Programmatic Matrix

Falsification	Harm			Percent
	Major	Moderate	Minor	

Matrix Notes Failure to perform a hazardous waste determination can result in the exposure of a significant amount of contaminants which may exceed levels that are protective of human health and the environment.

Adjustment -\$7,500

Base Penalty Subtotal \$2,500

## Violation Events

Number of Violation Events 1

	daily	monthly	quarterly	semiannual	annual	single event
mark only one use a small x						X

Violation Base Penalty \$2,500

One single event is recommended based on the one drum documented at the site during the November 10, 2004 investigation.

## Economic Benefit (EB) for this violation

## Statutory Limit Test

Estimated EB Amount \$20

Violation Final Penalty Total \$2,300

This violation Final Assessed Penalty (adjusted for limits) \$2,300



**Economic Benefit Worksheet**

Respondent Pat, Inc. dba Action Excavating  
 Case ID No. 22886  
 Reg. Ent. Reference No. RN100756097  
 Additional ID No(s): N/A  
 Media [Statute] Petroleum Storage Tank  
 Violation No. 6

Percent Interest	Years of Depreciation
5.0	15

Item Description	Item Cost	Date Required	Final Date	Yrs	Interest Saved	Onetime Costs	EB Amount
No commas or \$							

**Delayed Costs**

Equipment				0.0	\$0	\$0	\$0
Buildings				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0
Engineering/construction				0.0	\$0	\$0	\$0
Land				0.0	\$0	n/a	\$0
Record Keeping System				0.0	\$0	n/a	\$0
Training/Sampling				0.0	\$0	n/a	\$0
Remediation/Disposal	\$1,000	10-Nov-2004	05-Apr-2005	0.4	\$20	n/a	\$20
Permit Costs				0.0	\$0	n/a	\$0
Other (as needed)				0.0	\$0	n/a	\$0

Notes for DELAYED costs

Estimated cost to perform a complete hazardous waste determination to include laboratory analysis. Date required is the date of investigation. Final date is the date a release determination report was submitted.

**Avoided Costs**

ANNUALIZE [1] avoided costs before entering item (except for one-time avoided costs)

Disposal				0.0	\$0	\$0	\$0
Personnel				0.0	\$0	\$0	\$0
Inspection/Reporting/Sampling				0.0	\$0	\$0	\$0
Supplies/equipment				0.0	\$0	\$0	\$0
Financial Assurance [2]				0.0	\$0	\$0	\$0
ONE-TIME avoided costs [3]				0.0	\$0	\$0	\$0
Other (as needed)				0.0	\$0	\$0	\$0

Notes for AVOIDED costs

Approx. Cost of Compliance **\$1,000****TOTAL** **\$20**

## Compliance History

Customer/Respondent/Owner-Operator:	CN600610604	Pat, Inc. dba Action Excavating	Classification: AVERAGE	Rating: 2.000
Regulated Entity:	RN100756097	ACTION EXCAVATING	Classification: AVERAGE	Site Rating: 1.00
ID Number(s):	AIR NEW SOURCE PERMITS	ACCOUNT NUMBER	TA4136L	
Location:	6824 OAK CREST DR W, FORT WORTH, TX, 76140		Rating Date: 9/1/04 Repeat Violator: NO	
TCEQ Region:	REGION 04 - DFW METROPLEX			
Date Compliance History Prepared:	January 18, 2005			
Agency Decision Requiring Compliance History:	Enforcement			
Compliance Period:	January 18, 2000 to January 18, 2005			

TCEQ Staff Member to Contact for Additional Information Regarding this Compliance History

Name: Sandy VanCleave Phone: (512) 239-0667

### Site Compliance History Components

- |  |            |
|--|------------|
| 1. Has the site been in existence and/or operation for the full five year compliance period? | Yes        |
| 2. Has there been a (known) change in ownership of the site during the compliance period?    | No         |
| 3. If Yes, who is the current owner?   | <u>N/A</u> |
| 4. If Yes, who was/were the prior owner(s)?  | <u>N/A</u> |
| 5. When did the change(s) in ownership occur?  | <u>N/A</u> |

### Components (Multimedia) for the Site :

- A. Final Enforcement Orders, court judgements, and consent decrees of the state of Texas and the federal government.

N/A

- B. Any criminal convictions of the state of Texas and the federal government.

N/A

- C. Chronic excessive emissions events.

N/A

- D. The approval dates of investigations. (CCEDS Inv. Track. No.)

- |   |            |          |
|---|------------|----------|
| 1 | 11/23/2004 | (340979) |
| 2 | 03/11/2002 | (111131) |
| 3 | 07/26/2001 | (111130) |
| 4 | 01/04/2005 | (345571) |
| 5 | 12/23/2004 | (345145) |

- E. Written notices of violations (NOV). (CCEDS Inv. Track. No.)

Date: 10/08/2001 (111130)

Self Report? NO

Classification: Moderate

Citation: 30 TAC Chapter 116, SubChapter B 116.110(a)[G]

Description: PBR 106.452

- F. Environmental audits.

N/A

Description:

- G. Type of environmental management systems (EMSs).

N/A

- H. Voluntary on-site compliance assessment dates.

N/A

- I. Participation in a voluntary pollution reduction program.

N/A

J. Early compliance.

N/A

Sites Outside of Texas

N/A

# TEXAS COMMISSION ON ENVIRONMENTAL QUALITY



IN THE MATTER OF AN  
ENFORCEMENT ACTION  
CONCERNING PAT, INC. DBA  
ACTION EXCAVATING;  
RN100756097

§  
§  
§  
§  
§

BEFORE THE  
  
TEXAS COMMISSION ON  
  
ENVIRONMENTAL QUALITY

## AGREED ORDER DOCKET NO. 2004-2082-MLM-E

### I. JURISDICTION AND STIPULATIONS

At its \_\_\_\_\_ agenda, the Texas Commission on Environmental Quality ("Commission" or "TCEQ") considered this agreement of the parties, resolving an enforcement action regarding Pat, Inc. dba Action Excavating ("Pat, Inc.") under the authority of TEX. WATER CODE chs. 7 and 26, and TEX. HEALTH & SAFETY CODE ch. 361. The Executive Director of the TCEQ, represented by the Litigation Division, and Pat, Inc. represented by Marshall J. Day of the law firm of Day & Day, P.C., appear before the Commission and together stipulate that:

1. Pat, Inc. owns and operates an excavating and heavy equipment service facility located at 6824 Oak Crest Drive West, Fort Worth, Tarrant County, Texas (the "Facility").
2. This Agreed Order is entered into pursuant to TEX. WATER CODE §§ 7.051 and 7.070. The Commission has jurisdiction of this matter pursuant to TEX. WATER CODE § 5.013 because it alleges violations of TEX. HEALTH & SAFETY CODE ch. 361, TEX. WATER CODE ch. 26, and TCEQ rules.
3. The Commission and Pat, Inc. agree that the Commission has jurisdiction to enter this Agreed Order, and that Pat, Inc. is subject to the Commission's jurisdiction.
4. Pat, Inc. received notice of the violations alleged in Section II ("Allegations") on or about December 6, 2004.
5. The occurrence of any violation is in dispute and the entry of this Agreed Order shall not constitute an admission by Pat, Inc. of any violation alleged in Section II ("Allegations"), nor of any statute or rule.

6. An administrative penalty in the amount of nine thousand six hundred sixty dollars (\$9,660.00) is assessed by the Commission in settlement of the violations alleged in Section II ("Allegations"). Pat, Inc. has paid two hundred eighty dollars (\$280.00) of the administrative penalty. The remaining amount of nine thousand three hundred eighty dollars (\$9,380.00) of the administrative penalty shall be payable in thirty-five monthly payments of two hundred sixty-eight dollars (\$268.00) each. The next monthly payment shall be paid within 30 days after the effective date of this Agreed Order. The subsequent payments shall each be paid not later than 30 days following the due date of the previous payment until paid in full. If Pat, Inc. fails to timely and satisfactorily comply with the payment requirements of this Agreed Order, including the payment schedule, the Executive Director may, at his option, accelerate the maturity of the remaining installments, in which event the unpaid balance shall become immediately due and payable without demand or notice. In addition, the failure of Pat, Inc. to meet the payment schedule of this Agreed Order constitutes the failure by Pat, Inc. to timely and satisfactorily comply with all of the terms of this Agreed Order.
7. Any notice and procedures which might otherwise be authorized or required in this action are waived in the interest of a more timely resolution of the matter.
8. The Executive Director of the TCEQ and Pat, Inc. have agreed on a settlement of the matters alleged in this enforcement action, subject to the approval of the Commission.
9. The Executive Director recognizes that Pat, Inc. has implemented the following corrective measures at the Facility in response to this enforcement action:
  - a. Beginning on December 28, 2004, a third-party contractor hired by Pat, Inc. began operations which resulted in waste oil being removed from the underground storage tank (UST), the UST being removed from the ground, soil samples being taken, all required reports being compiled, and contaminated soil being properly disposed of.
  - b. On March 15, 2005, a third-party contractor hired by Pat, Inc. removed two 55-gallon drums from the site.
10. The Executive Director may, without further notice or hearing, refer this matter to the Office of the Attorney General of the State of Texas ("OAG") for further enforcement proceedings if the Executive Director determines that Pat, Inc. has not complied with one or more of the terms or conditions in this Agreed Order.
11. This Agreed Order shall terminate five years from its effective date or upon compliance with all the terms and conditions set forth in this Agreed Order, whichever is later.

12. The provisions of this Agreed Order are deemed severable and, if a court of competent jurisdiction or other appropriate authority deems any provision of this Agreed Order unenforceable, the remaining provisions shall be valid and enforceable.

## II. ALLEGATIONS

Pat, Inc. is alleged to have violated:

1. 30 TEX. ADMIN. CODE § 334.49(a)(4) and TEX. WATER CODE § 26.3475(d), by failing to provide corrosion protection to the UST as documented on November 10, 2004.
2. 30 TEX. ADMIN. CODE § 37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum UST's as documented on November 10, 2004.
3. 30 TEX. ADMIN. CODE § 334.50(a)(1)(A) and TEX. WATER CODE § 26.3475(c)(1), by failing to provide a method of release detection which is capable of detecting a release from any portion of the UST system which contains regulated substances including the tanks, piping and other underground ancillary equipment as documented on November 10, 2004.
4. 30 TEX. ADMIN. CODE § 334.7(a)(1) and TEX. WATER CODE § 26.346(a), by failing to register with the Commission, on authorized Commission forms, a UST in existence on or after September 1, 1987, as documented on November 10, 2004.
5. 30 TEX. ADMIN. CODE § 335.4, by failing to prevent an unauthorized discharge of used oil and other wastes to surface soils and storm water drainage at the Facility as documented on November 10, 2004.
6. 30 TEX. ADMIN. CODE § 335.62 and 40 CFR § 262.11, by failing to conduct a hazardous waste determination on the contents of an unlabeled 55-gallon drum that was observed on the west side of the Facility as documented on November 10, 2004.

## III. DENIALS

Pat, Inc. generally denies each allegation in Section II ("Allegations").

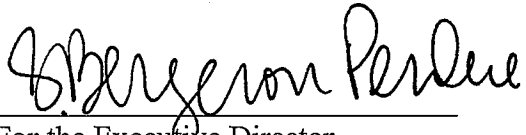
#### IV. ORDER

1. It is, therefore, ordered by the TCEQ that Pat, Inc. pay an administrative penalty as set forth in Section I, Paragraph 6 above. The imposition of this administrative penalty and Pat, Inc.'s compliance with all the terms and conditions set forth in this Agreed Order resolve only the allegations in Section II. The Commission shall not be constrained in any manner from considering or requiring corrective action or penalties for violations which are not raised here. Administrative penalty payments shall be made payable to "Texas Commission on Environmental Quality" and shall be sent with the notation "Re: Pat, Inc. dba Action Excavating, Docket No. 2004-2082-MLM-E" to:  
  
Financial Administration Division, Revenues Section  
Attention: Cashier's Office, MC 214  
Texas Commission on Environmental Quality  
P.O. Box 13088  
Austin, Texas 78711-3088
2. The provisions of this Agreed Order shall apply to and be binding upon Pat, Inc. Pat, Inc. is ordered to give notice of the Agreed Order to personnel who maintain day-to-day control over the Facility operations referenced in this Agreed Order.
3. This Agreed Order, issued by the Commission, shall not be admissible against Pat, Inc. in a civil proceeding, unless the proceeding is brought by the OAG to: (1) enforce the terms of this Agreed Order; or (2) pursue violations of a statute within the Commission's jurisdiction, or of a rule adopted or an order or permit issued by the Commission under such a statute.
4. This agreement may be executed in multiple counterparts, which together shall constitute a single original instrument. Any executed signature page to this Agreement may be transmitted by facsimile transmission to the other parties, which shall constitute an original signature for all purposes.
5. Under 30 TEX. ADMIN. CODE § 70.10(b) and TEX. GOV'T CODE § 2001.142, the effective date of this Agreed Order is the date of hand-delivery of the Order to Pat, Inc., or three days after the date on which the Commission mails notice of the Order to Pat, Inc., whichever is earlier. The Chief Clerk shall provide a copy of this Agreed Order to each of the parties.

## SIGNATURE PAGE

### TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

For the Commission



For the Executive Director

9/23/06

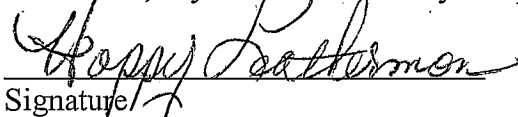
Date

I, the undersigned, have read and understand the attached Agreed Order. I represent that I am authorized to agree to the attached Agreed Order on behalf of the entity, if any, indicated below my signature, and I do agree to the terms and conditions specified therein. I further acknowledge that the TCEQ, in accepting payment for the penalty amount, is materially relying on such representation.

I also understand that my failure to comply with the Ordering Provisions, if any, in this order and/or my failure to timely pay the penalty amount, may result in:

- A negative impact on my compliance history;
- Greater scrutiny of any permit applications submitted by me;
- Referral of this case to the Attorney General's office for contempt, injunctive relief, additional penalties, and/or attorney fees, or to a collection agency;
- Increased penalties in any future enforcement actions against me;
- Automatic referral to the Attorney General's Office of any future enforcement actions against me; and
- TCEQ seeking other relief as authorized by law.

In addition, any falsification of any compliance documents may result in criminal prosecution.



Signature

8-1-06

Date

HOPPY LEATHERMAN

Name (Printed or typed)

Agent

Title

Authorized representative of  
Pat, Inc. dba Action Excavating